

Before the  
POSTAL REGULATORY COMMISSION  
Washington, DC 20268-0002

Order No. 6047  
Docket No. RM2020-4

Regulations Pertaining to 39 U.S.C. 601

COMMENTS OF THE BERKSHIRE COMPANY IN RESPONSE TO PROPOSED RULEMAKING FOR  
REGULATIONS PERTAINING TO SECTION 601

**Introduction**

The Berkshire Company is an independent consulting firm for the print and mail industry. The comments in this document represent the firm's management, and not any of our clients.

**General Comments**

The order issued on November 24, 2021 are new rules promulgated by the Postal Regulatory Commission (PRC) deemed necessary to carry out 39 U.S.C. 601.

The general impact of the new rules is that they assert the role of the PRC as the arbiter of interpretation of 39 U.S.C. 601. This is appropriate in both a long-term view of the role of the PRC and recent service standard changes implemented by the US Postal Service's (USPS) Board of Governors and executive management.

**Additional Comments Concerning the Order**

I. The rules published under “§ 3065.2 Prohibition on new regulations” state:

- (a) The Postal Service may not promulgate any new regulations, issue guidance, or enter into agreements purporting to suspend or otherwise define the scope of the letter monopoly.
- (b) The Postal Service may not promulgate any new regulations or issue guidance purporting to interpret 39 U.S.C. 601.

**TBC Comment:** The requirements of 39 U.S.C. 601 and the definition of a “letter” are the basis when determining the differences between what must be submitted as First-Class Mail and USPS Marketing Mail. The official flowchart “Determining USPS Marketing Mail Eligibility” (<https://pe.usps.com/resources/StandardMailEligibility/USPSMarketingMailEligibility.pdf>) includes 7 decision points backed by 16 Customer Support Rulings.

The decision points directly impacted by this rule are:

- Is it a bill or statement of account? (DMM 233.2.2)
- Does it contain “personal information”? (DMM 233.2.3)

The new rule may be interpreted that the USPS would be prohibited from issuing guidance (customer support rulings) on these issues. A reasonable reading of the rule allows a mailer to appeal to the PRC when the USPS rejects a mailing based on interpretation of the words “personal information” as the mailer may claim it is not a “letter” as defined by 39 U.S.C. 310.1.

The PRC should clarify the appeals process for USPS Marketing Mail eligibility.

2. Several respondents to previous orders stated that any changes should be delayed until “post pandemic”. The most recent announcements of new virus variants indicate that we may never reach a “post pandemic” stage. The public and the mailing industry are reliant upon clear, consistent rulings by the PRC, and the pandemic is not a sufficient reason to delay those rulings.
3. The Berkshire Company resubmits their opinion that the term “letter” needs to be better defined. The definition of a “letter” is provided in 39 U.S.C. 310.1. More than two-thirds of the definition is dedicated to clarifying what documents are not letters. When the exceptions are greater than the rule, then the rule is obtuse.

December 14, 2021

Respectfully submitted,

Mark M. Fallon  
President & CEO  
The Berkshire Company  
13 Carter Rd  
S Yarmouth MA 02664-4405

[mmf@berkshire-company.com](mailto:mmf@berkshire-company.com)  
Tel: 508-485-9090